

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES,	) U.S.C.A. No. 22-10166
	) U.S.D.C. No. 21-cr-00210-JLT-SKO-1 (EDCA)
Plaintiff-Appellee,	)
	) DEFENDANT'S
	) MOTION TO STAY BRIEFING
v.	)
	)
	)
	)
SABINO RAMOS,	)
	)
	)
Defendant-Appellant.	)
_____	)

Defendant-Appellant Mr. Ramos moves this Court to grant this motion to stay briefing pursuant to Federal Rules of Appellate Procedure 11 and 27, and Ninth Circuit Rules 11-1.2, 27-1, 27-7 and 27-8, and for reasons set forth below, to stay the briefing in this case pending resolution of *United States v. Lucas*, 70 F.4<sup>th</sup> 1218 (9<sup>th</sup> Cir. 2023), *rehearing en banc granted*, *United States v. Lucas*, 77 F.4<sup>th</sup> 1275 (9<sup>th</sup> Cir. 2023).

The *Lucas* case pending before this Court concerns precisely the same issue that will be dispositive of the issue raised in this appeal, to wit, whether an upward enhancement under USSG §2K2.1 requires clear and convincing evidence to prove upward adjustments.

Mr. Ramos timely appealed and the matter is now pending before this Court, with a current due date of today for the appellant's reply brief. Mr. Ramos is in custody serving his 92-month sentence. As of today, this Court has yet to issue a decision in *Lucas*.

Because the same issue is presented in Mr. Ramos' case as in *Lucas*, it is likely that the decision will resolve this appeal by Mr. Ramos. It is settled that a court has "broad discretion to stay

proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997). Accordingly, “proceedings in one suit may be stayed to abide the proceedings in another,” provided that the stay is of reasonable duration. *Landis v. North American Co.*, 299 U.S. 248, 254–55 (1936). Indeed, the Supreme Court has upheld a district court’s authority to stay proceedings *sua sponte* pending a dispositive ruling from another tribunal. *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 30–31 (1959).

Counsel for Mr. Ramos has contacted opposing counsel, AUSA Aaron Pennekamp, who is checking with his appellate chief before weighing in on the government’s position on this motion. If the Court denies Mr. Ramos’ request, he respectfully seeks leave to file his reply brief within 7 days.

For all these reasons, Mr. Ramos moves this Court to stay further briefing in this case pending a decision by this Court in the above-listed case or until further order of the Court. This will save the parties and this Court from spending time and resources in a case that may ultimately be resolved by another pending case.

Respectfully submitted,

Date: November 1, 2023

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